UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,686	07/02/2001	William Elmer Kish		1760

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EXAMINER
LASTRA, DANIEL

ART UNIT	PAPER NUMBER
3688	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	09/898,686	KISH, WILLIAM ELMER
Office Action Summary	Examiner	Art Unit	
	DANIEL LASTRA	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _12/16/2008_ .

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _27-43_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _27-43_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____ .

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____ .

DETAILED ACTION

1. Claims 27-43 have been examined. Application 09/898,686 ENHANCEMENT INCENTIVE SYSTEM USING TRANSACTION EVENTS FOR USERS REWARDS ON A DISTRIBUTED NETWORK has a filing date 07/02/2001.

Response to Amendment

2. In response to Final Rejection filed 01/22/2008, the Applicant filed an RCE on 12/16/2008, which amended claim 29.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 29 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 29 recites "providing a first ratio for establishing units of business equity for a time period of work by the employees and a second ratio for establishing the units of business equity for product purchases by the employees…converting some of the labor points into company stock shares according to the first ratio and converting some of the purchase points into the company stock shares according to the second ratio". Applicant's specification teaches that "an user

converts available points by the Point Conversion Event Module 540 using the

Tabulator's 250 Ratio" (see Applicant's specification page 21, paragraph 2) and that

"the purchase amount is converted by the Point Ratio which the ratio is stored in the

Tabulator database" (see Applicant's specification page 22, paragraph 2). However,

Applicant's specification does not teach that Purchase Point ratio stored in the Tabulator

database 250 is different from the work shift Point ratio stored in said Tabulator

database 250. The Applicant needs to point out to the Examiner where in the

Applicant's specification is recited that tabulator database 250 stored different point

ratios depending in the type of transaction (i.e. work shift or product purchase).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed
or described as set forth in section 102 of this title, if the differences between the
subject matter sought to be patented and the prior art are such that the subject
matter as a whole would have been obvious at the time the invention was made
to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was
made.

Claims 27, 28, 34 and 39 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Fredregill (WO 01/86545) in view of Bachman (US 6,895,386).

Claim 27, Fredregill teaches:

A method for compensating employees with business equity based upon

employee productivity comprising the steps of:

setting a work shift requirement (see page 17, lines 1-15; 30-32 "service time");

identifying employee productivity in excess of the work shift requirement (see page 17, lines 1-15 "high performance";);

assigning to the employee a point value equal to the excess of the work shift requirement (see page 17, lines 1-20);

Fredregill fails to teach providing a formula for establishing a unit of business equity for a time period of work by the employee and applying the formula to convert the point value assigned to the employee into one or more units of business equity. However, Bachman teaches a system where employees use incentive points to purchase equity shares, which allows said employees to invest in a particular company and build loyalty towards the company while acquiring an asset that can be liquidated should the employee desire (see Bachman col 3, lines 35-40; col 4, line 35 – col 5, line 30). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Fredregill's employee's incentive system would add the Bachman's stock compensation system in order to allow employees to convert the reward points earned from work performance and purchases, as taught by Fredregill to company equity shares, as taught by Bachman in order to increase the loyalty of said employees towards a company.

As per claim 28, Fredregill teaches:

wherein the point value assigned to the employee is recorded in a database accessible through a distributed network of computers (see page 17, lines 1-20).

Claims 34 and 39, Fredregill teaches:

A method for compensating employees comprising the steps of:

registering a plurality of employees with employment agreements with a company and creating identification profiles on a database for a plurality of employees working for a company (see page 4, lines 20-30);

awarding labor points to each of the employees for work performed by each of the employees for the company (see page 6, lines 15-25; page 17, lines 1-10);

awarding purchase points to each of the employees for product purchases made by each of the employees from the company (see page 6, lines 1-37);

providing a database for storing the work performed by each of the employees, the labor points and the purchase points awarded to each of the employees (see page 21, lines 1-15).

providing a formula for establishing a unit of business equity for the labor points awarded to one the employees (see page 17, lines 1-20 "point issuance transaction and the account will be credited in real time").

Fredregill fails to teach converting some of the labor points into company stock shares according to the formula and storing the stock shares converted from the portion of the labor points awarded to the one of the employees in the database and providing each of the employees with cash for a first portion of the labor points and the purchase points that have been awarded to the employees and converting a second portion of the labor points and the purchase points that have been awarded to each of the employees into company stock shares owned by each of the employees according to the formula. However, Bachman teaches a system where employees use incentive points to purchase equity shares, which allows said employees to invest in a particular company

and build loyalty towards the company while acquiring an asset that can be liquidated should the employee desire (see Bachman col 3, lines 35-40; col 4, line 35 – col 5, line 30). Therefore, the same argument made in claim 27 regarding this missing limitation is also made in claims 34 and 39.

5. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fredregill (WO 01/86545) in view of Bachman (US 6,895,386) and further in view of Lee (US 2001/0054006).

Claim 29, Fredregill teaches:

A method for compensating employees comprising the steps of:

registering a plurality of employees with employment agreements with a company (see page 4, lines 20-30);

awarding labor points to each of the employees for work performed by each of the employees for the company (see page 6, lines 15-25; page 17, lines 1-10);

awarding purchase points to each of the employees for product purchases made by each of the employees from the company (see page 6, lines 1-37);

providing a database for storing the work performed by each of the employees, the labor points and the purchase points awarded to each of the employees (see page 21, lines 1-15).

Fredregill fails to teach providing a first *ratio* for establishing units of business equity for a time period of work by the employees and a second *ratio* for establishing the units of business equity for product purchases by the employees; converting some of the labor points into company stock shares according to the first *ratio* and converting

some of the purchase points into the company stock shares according to the second *ratio*. However, <u>Bachman</u> teaches a system where employees use incentive points to purchase equity shares, which allows said employees to invest in a particular company and build loyalty towards the company while acquiring an asset that can be liquidated should the employee desire (see <u>Bachman</u> col 3, lines 35-40; col 4, line 35 – col 5, line 30) and <u>Lee</u> teaches that it is old and well known in the promotion art to apply different redemption rates to reward points earned at different venues. (see <u>Lee</u> figures 4, 5). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that <u>Fredregill</u>'s employee's incentive system would add the <u>Bachman</u>'s stock compensation system in order to allow employees to convert the reward points earned from work performance and purchases, as taught by <u>Fredregill</u> to company equity shares, as taught by <u>Bachman</u> where labor points earned in a company would have a different redemption rates that purchase points earned at other venues, as <u>Lee</u> teaches that it is old and well known to apply different redemption rates to reward points earned at different venues.

6. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over <u>Fredregill</u> (WO 01/86545) in view of <u>Bachman</u> (US 6,895,386) and further in view of <u>Lee</u> (US 2001/0054006) and <u>Boyd</u> (US 2004/0193489).

Claim 30, <u>Fredregill</u> fails to teach:

offering the products to the employees through an auction; receiving bids from the some of the employees in response to the auction; and providing one of the products to the employee who offers the bid having the highest value and includes

some of the labor points and the purchase points. However, <u>Boyd</u> teaches a system where users use incentive points to bid for products in an auction (see <u>Boyd</u> paragraphs 125-129). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that <u>Fredregill</u> would be motivated to allow employees to participate in an auction using said employees' incentive points, as taught by <u>Boyd</u> as well to purchase equity shares with said points, as taught by <u>Bachman</u> in order that said employees would be more willing to perform work for said employees' company.

7. Claims 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over <u>Fredregill</u> (WO 01/86545) in view of <u>Bachman</u> (US 6,895,386) and further in view of <u>Lee</u> (US 2001/0054006) and <u>O'Brien</u> (US 6,587,831).

Claim 31, <u>Fredregill</u> fails to teach:

providing a scheduler that creates a work schedule that includes a plurality of work shifts for the employees;

issuing a request for quote for one of the work shifts to the employees through a reverse auction;

providing a plurality of quotes for the work shift that include a commitment for some of the labor points or the purchase points;

accepting one of the plurality of quotes having the highest value for one of the work shifts in exchange for the labor points or the purchase points in the quote.

However, <u>O'Brien</u> teaches a system that allows employees to bid for work shifts in a reverse auction (see <u>O'Brien</u> col 8, lines 15-30). Therefore, it would have been

obvious to a person of ordinary skill in the art at the time the application was made, to know that Fredregill and Lee would be motivated to allow employees to bid for work shifts, as taught by O'Brien in order to give said employees control over their work loads and also being able to earn incentive points for said workloads, as taught by Bachman, therefore, increasing the loyalty of said employee for a company.

　　　　Claim 32, Fredregill fails to teach:

　　　　providing a scheduler that creates a work schedule that includes a plurality of work shifts having a plurality of job classifications for the employees;

　　　　issuing a request for quote for work shifts having one of the job classifications to the employees who are qualified for the work shifts through a reverse auction; and

　　　　providing a plurality of quotes for some of the work shifts. However, the same argument made in claim 31 regarding this missing limitation is also made in claims 32.

　　　　Claim 33, Fredregill fails to teach:

　　　　accepting one of the plurality of quotes having the highest value for one of the work shifts in exchange for the labor points or the purchase points in the quote. However, O'Brien teaches allowing employees to bid for work shift using labor points (see col 7, line 60 – col 8, line 15). Therefore, the same argument made in claim 31 regarding this missing limitation is also made in claims 33.

8.　Claims 35 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fredregill (WO 01/86545) in view of Bachman (US 6,895,386) and further in view of Boyd (US 2004/0193489).

　　　　Claims 35 and 40, Fredregill fails to teach:

offering the products to the employees through an auction; receiving bids from the some of the employees in response to the auction; and providing one of the products to the employee who offers the bid having the highest value and includes some of the labor points and the purchase points. However, Boyd teaches a system where users use incentive points to bid for products in an auction (see Boyd paragraphs 125-129). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Fredregill would be motivated to allow employees to participate in an auction using said employees' incentive points, as taught by Boyd as well to purchase equity shares with said points, as taught by Bachman in order that said employees would be more willing to perform work for said employees' company.

9. Claims 36-38 and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fredregill (WO 01/86545) in view of Bachman (US 6,895,386) and further in view of O'Brien (US 6,587,831).

Claims 36 and 41, Fredregill fails to teach:

providing a scheduler that creates a work schedule that includes a plurality of work shifts for the employees;

issuing a request for quote for one of the work shifts to the employees through a reverse auction;

providing a plurality of quotes for the work shift that include a commitment for some of the labor points or the purchase points;

accepting one of the plurality of quotes having the highest value for one of the work shifts in exchange for the labor points or the purchase points in the quote.

However, O'Brien teaches a system that allows employees to bid for work shifts in a reverse auction (see O'Brien col 8, lines 15-30). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Fredregill would be motivated to allow employees to bid for work shifts, as taught by O'Brien in order in order to give said employees control over their work loads and also being able to earn incentive points for said workloads, as taught by Bachman, therefore, increasing the loyalty of said employee for the company.

Claims 37 and 42, Fredregill fails to teach:

providing a scheduler that creates a work schedule that includes a plurality of work shifts having a plurality of job classifications for the employees;

issuing a request for quote for work shifts having one of the job classifications to the employees who are qualified for the work shifts through a reverse auction; and

providing a plurality of quotes for some of the work shifts. However, the same argument made in claim 31 regarding this missing limitation is also made in claims 37 and 42).

Claims 38 and 43, Fredregill fails to teach:

accepting one of the plurality of quotes having the highest value for one of the work shifts in exchange for the labor points or the purchase points in the quote. However, O'Brien teaches allowing employees to bid for work shift using labor points

(see col 7, line 60 – col 8, line 15). Therefore, the same argument made in claim 31 regarding this missing limitation is also made in claims 38 and 43.

Response to Arguments

10. Applicant's arguments filed 12/16/2008 have been fully considered but they are not persuasive. The Applicant argues that the prior arts do not teach Applicant's claimed invention because according to the Applicant, there is a substantial difference between a formula for establishing a unit of business equity for a time period of work by the employee based upon employee productivity and stock provided by a co-branded corporation based upon purchases made with a credit card. The Applicant argues that the formula for equity based upon credit purchases will typically be a very small percentage of the purchase price, thus according to the Applicant, there is a substantial difference between a formula based upon work and a formula based upon credit card purchases. The Examiner answers that the Applicant is arguing about limitation not stated in the claims or Specification. Nowhere, in Applicant's claims or Specification is recited that a formula for equity based upon credit purchases will typically be a very small percentage of the purchase price compared to work shift formula. Therefore, contrary to Applicant's argument, the prior arts are combinable.

The Applicant argues that Fredregill does not disclose the limitation of setting a work shift requirement and that "specific work goal" is not work shift requirement because according to the Applicant, a work shift include three 8 hrs shifts where the 1st shift can run from 6am to 2PM, a 2nd shift can run from 2PM to 10PM and a 3rd shift can run from 10PM to 6Am and that according to the Applicant, this limitation is not

disclosed in <u>Fredregill</u>. Furthermore, the Applicant argues that "service time" disclosed by <u>Fredregill</u> is the cumulative time of employment rather than a work shift that is part of a work day. The Examiner answers that the Applicant is arguing about limitation not stated in the claims when he argues that a work shift includes three 8 hrs shifts or that work shifts is not cumulative time of employment. Applicant's specification defines "work shift requirement" in page 13, where it recites that "Points rewards are adjusted to the level of work performed and the return for the work shift". <u>Fredregill</u> teaches rewarding points to employees for high performance (i.e. level of work performed) for a service time (i.e. "leave of absence is not considered service time" see page 17, lines 30-32). Therefore, contrary to Applicant's argument, <u>Fredregill</u> rewards employees for service time (i.e. work shift) and therefore, contrary to Applicant's argument, <u>Fredregill</u> teaches the Applicant's "work shift requirement" limitation.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on (571)272-6722. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/
Examiner, Art Unit 3688
March 4, 2009